

JS 44 (Rev. 12/07, NJ 5/08)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

MICHELLE SMITH

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire  
Kimmel & Silverman, P.C.30 E. Butler Pike  
Ambler, PA 19002  
(215) 540-8888**DEFENDANTS**

NCO FINANCIAL SYSTEMS, INC.

County of Residence of First Listed Defendant \_\_\_\_\_

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)  
(For Diversity Cases Only)

Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business In This State	PTF	DEF
<input type="checkbox"/>	<input type="checkbox"/> 1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> 4	<input type="checkbox"/> 4
<input type="checkbox"/>	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/>	<input type="checkbox"/> 5	<input type="checkbox"/> 5
<input type="checkbox"/>	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/>	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 840 Trademark	<input checked="" type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<b>LABOR</b>	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability	<b>REAL PROPERTY</b>	<input type="checkbox"/> 411 Voting	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b>	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 444 Welfare	<b>Habeas Corpus:</b>	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 535 Death Penalty	<b>IMMIGRATION</b>	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability		<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN**

(Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**15 U.S.C SECTION 1692**Brief description of cause:  
**Fair Debt Collection Practices Act****VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23**DEMAND \$**CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes  No**VIII. RELATED CASE(S)**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

Explanation: \_\_\_\_\_

DATE

02/16/12

SIGNATURE OF ATTORNEY OF RECORD

## UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 2835 S. WAGNER, UNIT 1104, ANN ARBOR MI 48103

Address of Defendant: 501 PRUDENTIAL RD., HORSHAM, PA 19044

Place of Accident, Incident or Transaction:

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes  No

Does this case involve multidistrict litigation possibilities?

Yes  No

*RELATED CASE, IF ANY:*

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes  No

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes  No

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes  No

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes  No

CIVIL: (Place  in ONE CATEGORY ONLY)

A. *Federal Question Cases:*

1.  Indemnity Contract, Marine Contract, and All Other Contracts

B. *Diversity Jurisdiction Cases:*

1.  Insurance Contract and Other Contracts

2.  FELA

2.  Airplane Personal Injury

3.  Jones Act-Personal Injury

3.  Assault, Defamation

4.  Antitrust

4.  Marine Personal Injury

5.  Patent

5.  Motor Vehicle Personal Injury

6.  Labor-Management Relations

6.  Other Personal Injury (Please specify)

7.  Civil Rights

7.  Products Liability

8.  Habeas Corpus

8.  Products Liability — Asbestos

9.  Securities Act(s) Cases

9.  All other Diversity Cases

10.  Social Security Review Cases

(Please specify)

11.  All other Federal Question Cases 15 U.S.C. § 1092

(Please specify)

**ARBITRATION CERTIFICATION**

(Check Appropriate Category)

I, Craig Thor Kummel, counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: 02/16/12

Attorney-at-Law

51100

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 02/16/12

Attorney-at-Law

51100

Attorney I.D.#

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**CASE MANAGEMENT TRACK DESIGNATION FORM**

Michele Smith : CIVIL ACTION  
v. :  
NCO FINANCIAL SYSTEMS, INC. NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

(a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )

(b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )

(c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (X)

(d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )

(e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )

(f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

02/16/12  
Date

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Attorney-at-law

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E-Mail Address

**UNITED STATES DISTRICT COURT  
FOR THE  
EASTERN DISTRICT OF PENNSYLVANIA**

MICHELLE SMITH,	)
	)
Plaintiff	)
	)
v.	) <b>Case No.:</b>
	)
NCO FINANCIAL SYSTEMS, INC.,	) <b>COMPLAINT AND DEMAND FOR</b>
	) <b>JURY TRIAL</b>
Defendant	)
	) <b>(Unlawful Debt Collection Practices)</b>

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**COMPLAINT**

MICHELLE SMITH (“Plaintiff”), by her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against NCO FINANCIAL SYSTEMS, INC. (“Defendant”):

**INTRODUCTION**

1. Plaintiff’s Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (“FDCPA”).

**JURISDICTION AND VENUE**

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business and has an office in the Commonwealth of Pennsylvania and therefore, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

## PARTIES

5. Plaintiff is a natural person residing in Ann Arbor, Michigan 48103.

6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

7. Defendant is a national debt collection company with corporate headquarters located at 507 Prudential Road in Horsham, Pennsylvania, 19044.

8. Defendant is a “debt collector” as that term is defined by 15 U.S.C. §1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

## FACTUAL ALLEGATIONS

10. At all relevant times, Defendant was attempting to collect an alleged consumer debt from Plaintiff.

11. The alleged debt at issue arose out of transactions, which were primarily for personal, family, or household purposes.

12. Plaintiff at all times hereto disputes owing the debt Defendant is attempting to collect.

13. Beginning in or before June 2010 and continuing through April 2011, Defendant, its agents, employees, and servants, engaged in debt collection activities seeking payment from Plaintiff.

14. Defendant repeatedly and continuously contacted Plaintiff on her home, work, and cellular telephones seeking and demanding payment for the above debt.

15. Defendant contacted Plaintiff, on average, two (2) times a day, causing Plaintiff to receive more than twenty (20) collection calls a month from Defendant.

16. Most recently, Defendant contacted Plaintiff on April 9, 2011, at 9:37 a.m.; April 11, 2011, at 1:46 p.m.; and April 12, 2011, at 6:17 p.m.

17. In addition to receiving telephone calls, Defendant would leave messages on Plaintiff's home answering machine, which was done with the intent and purpose of harassing Plaintiff.

18. Further, on more than one instance, when Plaintiff answered Defendant's telephone call and hung up, Defendant has immediately called her back, again simply to harass her.

19. Plaintiff received telephone calls from the following number: (800) 709-8625, which the undersigned has confirmed is a telephone number belonging to Defendant.

20. Within five (5) days of its initial communication with Plaintiff, Defendant failed to send Plaintiff written notification of her rights to dispute the debt and/or request verification of the debt.

21. In those instances where Plaintiff has spoken with Defendant, Defendant threatened Plaintiff that it was sending documents to garnish her wages.

22. Also, Defendant threatened Plaintiff that it would file suit to garnish her wages.

23. Further, Defendant threatened Plaintiff that her failure to pay the alleged

debt would result in her wages and/or banking accounts being garnished.

24. Upon information and belief, at the time Defendant threatened to file suit and/or garnish Plaintiff's wages, it did not intend to take such action.

25. In fact, to date, Defendant has not taken any legal action against Plaintiff, including garnishing her wages.

26. Further, Defendant, by and through its employees, repeatedly threatened to report Plaintiff's debt to a credit-reporting agency.

27. On more than one occasion, Plaintiff sent Defendant written correspondence requesting information about the alleged debt, including the name of the creditor as well as the original promissory notes.

28. On at least two separate occasions, Defendant deceptively claimed that it had mailed her the documents that she had requested; however, Plaintiff never received any letters or written documentation from Defendant.

29. When Plaintiff again contacted Defendant for documentation of the debt, Defendant, by and through its employee "Nia Brown", told Plaintiff that she had no right "to ask her questions," and that they "don't have to send [her] anything."

30. Lastly, in addition to contacting Plaintiff on her home and cellular telephones, Defendant also contacted Plaintiff at her place of employment as well as her family members, in its attempts to collect a debt from Plaintiff.

31. It was harassing for Plaintiff to have her family members contacted when Defendant already had her current contact information, including home address, home telephone number, and cellular phone number.

32. Also, on April 9, 2011, Defendant contacted Plaintiff's supervisor

regarding the debt allegedly owed by Plaintiff.

33. Defendant's continuous and repeated calls to Plaintiff, her family, and her work supervisor were made with the intention of annoying, abusing, and harassing her.

### **CONSTRUCTION OF APPLICABLE LAW**

34. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages." Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

35. The FDCPA is a remedial statute, and therefore must be construed liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be construed liberally in favor of the consumer." Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

36. The FDCPA is to be interpreted in accordance with the "least sophisticated" consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3<sup>rd</sup> Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not "made for the protection of experts, but for the public - that vast multitude which includes the

ignorant, the unthinking, and the credulous, and the fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it ensures protection of all consumers, even naive and trusting, against deceptive collection practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at 1318

**COUNT I**  
**DEFENDANT VIOLATED**  
**THE FAIR DEBT COLLECTION PRACTICES ACT**

37. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or more of the following ways:

- a. Defendant violated of the FDCPA generally;
- b. Defendant violated §1692c(a)(3) of the FDCPA by contacting Plaintiff at her place of place of employment when Defendant knew or had reason to know that the Plaintiff’s employer prohibits her from receiving such communication;
- c. Defendant violated §1692d of the FDCPA by harassing Plaintiff in connection with the collection of an alleged debt;
- d. Defendant violated §1692d(5) of the FDCPA, when it caused the Plaintiff’s telephone to ring repeatedly or continuously with the intent to harass, annoy or abuse Plaintiff;
- e. Defendant violated §1692e of the FDCPA by using false, deceptive, or misleading representations or means in connection with the collection

of a debt;

- f. Defendant violated §1692e(4) of the FDCPA by threatening to garnish Plaintiff's wages and bank accounts when such action could not be legally taken or was not intended to be taken;
- g. Defendant violated §1692e(10) of the FDCPA by using a false representation or deceptive means to collect or attempt to collect a debt;
- h. Defendant violated §1692f of the FDCPA by using unfair or unconscionable means to collect or attempt to collect a debt;
- i. Defendant violated §1692f(6) by threatening to take nonjudicial action to garnish Plaintiff's wages;
- j. Defendant violated §1692g of the FDCPA by refusing to validate the debt and name the original creditor;
- k. Defendant violated §1692g(a) of the FDCPA by failing to send Plaintiff written notification of her rights to dispute the debt and/or request verification of the debt and information about the debt; and
- l. Defendant acted in an otherwise deceptive, unfair and unconscionable manner and failed to comply with the FDCPA.

WHEREFORE, Plaintiff, MICHELLE SMITH, respectfully prays for a judgment as follows:

- a. All actual compensatory damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);

- b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- c. All reasonable attorneys' fees, witness fees, court costs and other litigation costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
- d. Any other relief deemed appropriate by this Honorable Court.

**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, MICHELLE SMITH, demands a jury trial in this case.

DATED: 02/16/12

RESPECTFULLY SUBMITTED

KIMMEL & SILVERMAN, P.C.

By: \_\_\_\_\_  
CRAIG THOR KIMMEL  
Attorney ID #57100  
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